

Re Lim Chor Pee

HIGH COURT (SINGAPORE) — ORIGINATION SUMMONS
NO 452 OF 1988

WEE CHONG JIN CJ, THEAN AND COOMARASWAMY JJ
21 SEPTEMBER 1990

Legal Profession — Grossly improper conduct — Income tax summons and Penal Code summons issued against solicitor — Settlement arrived with prosecution — Settlement withdrawn subsequently — Solicitor admitted to certain facts — Subsequent fresh settlement — Conviction of offence (not involving dishonesty) — Composition of other offences — Whether paying composition amounted to admission of guilt — Complaints by Attorney General — Whether such facts can be relied upon to show grossly improper conduct — Whether composition paid under Income Tax Act similar to that under Penal Code — Penal Code (Cap 224, 1985 Ed), s 199

Legal Profession — Solicitor's accounts — Transfer of fees from disbursement account — Whether failure to transfer fees to profit and loss account per se amounted to grossly improper conduct — Burden of proof — Whether paying composition under the Income Tax Act amounts to admission of guilt

Legal Profession — Disciplinary proceedings — Charge — Charge not within scope of information from Attorney General — Whether fatal to charge — Amendment of charge at late stage — Amended charge not inquired into by inquiry committee — No notice given to respondent

Legal Profession — Disciplinary proceedings — Evidence — Expert evidence relied upon by disciplinary committee not admissible — Evidence contained conjectures, inferences and opinions — Whether disciplinary committee could rely on the evidence — Proof of facts to support such inferences

Income Tax — Composition of summons — Payment of fine and penalty same as if convicted — Whether amounts to admission of guilt

The respondent is an advocate and solicitor of the Supreme Court and was ordered in these proceedings to show cause why he should not be dealt with under s 80 of the Legal Profession Act ('the Act'). This arose from a determination by a disciplinary committee ('the committee') appointed under s 87(1) of the Act in relation to information referred by the Attorney General ('A-G'). The determination was based on six complaints which the committee found had been proved and the respondent was guilty of grossly improper conduct.

The information was contained in a letter dated 2 March 1983 written by Mr Glenn Knight on behalf of the A-G. In the letter, it was alleged that the respondent had in manipulating the accounts of the firm of Chor Pee & Hin Hiong ('the firm'), in particular the disbursement account, sought and succeeded in fraudulently evading the payment of tax. The letter also referred to a report by one Keith Tay ('KT') which specifically averred to the falsifying of ledger pages of the disbursement and other accounts relating to fee income received by the firm, and requesting the former accounts clerk Jeannie Yim ('JY') to falsify books of account to cover up the transfer of income to Hong Kong and transferring fee income to separate ledger accounts to enable personal expenses to be paid from them. In relation to the alleged falsifying of ledger pages of the disbursement and other accounts, and the alleged request to JY to falsify books of account, the matters were covered by income tax summonses and compounded at three times the penalty.

A In August 1978, Khoo Hin Hiong ('KHH'), a partner of the firm, was convicted of the offence of abetting a criminal breach of trust by one Cho Jock Kim. The Criminal Investigation Department ('CID') commenced investigations into matters relating generally to the accounts of the firm, and served the respondent with a notice of intended prosecution of an offence of criminal breach of trust under the Penal Code in respect of \$19,729.70. On 4 October 1979 the respondent was served with four additional notices of intended prosecution in respect of (a) conspiring with JY to rewrite the 1973 'P' ledger account book of the firm; (b) instigating JY to give false evidence in respect to the \$19,729.70; (c) giving false evidence to the CID in respect of asking JY to rewrite the 'P' books; (d) criminal breach of trust of 8,023,000 shares of Far Eastern Hotel Development Ltd belonging to International Holdings Pte Ltd, all of which were offences punishable under various sections of the Penal Code. A series of discussions and negotiations between the respondent's solicitor and the authorities followed without any settlement.

B On the day before the respondent was to be charged for CBT of the \$19,729.70, an agreement was reached between the authorities and the then respondent's solicitor whereby the principal terms were that (a) the respondent would admit to facts constituting an offence under s 96(1)(d) of the Income Tax Act, namely, that he had authorized JY to falsify books of accounts; (b) that a charge against the respondent would be framed; (c) that if the Comptroller of Income Tax decided not to compound the offence, the respondent would plead guilty; (d) that if disciplinary proceedings were subsequently taken, the respondent would admit to such facts and also 'those facts' which warranted a 'striking off'. It was also agreed that the respondent would not be charged on the following day.

E A statement of fact constituting the tax offence was filed five and a half months later on 15 May 1980. By a letter dated 16 June 1980 the respondent admitted to the complaint and requested that the offence be compounded. This was rejected and the matter was mentioned in court. The parties failed to agree on the statement of facts and on 22 July 1980 the agreement reached earlier was called off. By end October 1980, the respondent faced five charges under the Penal Code, namely, (a) CBT of \$19,729.70 in DAC No 2795/80; (b) giving false evidence relating to asking JY to rewrite certain accounts in DAC No 2796/80; (c) instigating JY to give false evidence relating to \$19,729.70 in DAC 2864/80; (d) CBT of \$85,118.00 of clients' money under DAC 4491/80; (e) CBT of \$40,000 of clients' money in DAC 4492/80. He also faced charges under the Income Tax Act, namely, Income Tax Summons Nos 50002/80 and 50004/80.

F On 11 November 1980 the trial of the CBT of \$19,729.70 in DAC 2795/80 commenced while the remaining charges were stood down. The respondent was acquitted without his defence being called. The appeal was also dismissed. Following this, he was served with three fresh income tax charges which were as follows: (a) Income Tax Summons No 51000/81 in which he was charged for having made, without reasonable excuse, incorrect return in 1972 by omitting income derived from his share of the fee of \$85,000; (b) Income Tax Summons No 51001/81 in which he was charged for having omitted wilfully with intent to evade tax from his return for the year of assessment 1974 income in respect of fees of \$90,000; and (c) Income Tax Summons No 51002/80 in which he was charged for having falsified books of account wilfully with intent to assist KHH to evade tax in respect of fees of \$90,000. Five days later another three income tax summonses were issued against the respondent, namely: (a)

Income Tax Summons No 51003/84 in which he was charged for having falsified books of account wilfully with intent to evade tax in respect of fees of \$90,000; (b) Income Tax Summons No 51004/84 in which he was charged for having omitted wilfully with intent to evade tax from the partnership return of the firm for the year of assessment 1974 income from fees of \$90,000; and (c) Income Tax Summons No 51005/84 in which he was charged for having made, without reasonable excuse, incorrect return in 1972 in respect of the firm by omitting income from a fee of \$85,000.

On 27 April 1981 the trial of the six income tax summons commenced while the rest of the charges were stood down. After ten days, the parties agreed to an adjournment with a view to working out a settlement. Pursuant to the agreement, the respondent pleaded guilty in Income Tax Summons No 51005/81 (which did not involve any dishonesty). He was fined and also paid tax penalties. The rest of the remaining seven tax charges were compounded and the Penal Code charges were withdrawn by the prosecution. Following the conclusion of the proceedings the A-G forwarded a copy of the statement of facts and the judge's comments in Income Tax Summons No 51005/81 and KT's report. No action was taken by the Law Society and another letter was sent by the A-G referring to s 86(2) of the Act. An inquiry committee conducted an inquiry and thereafter submitted its report to the Council of the Law Society recommending that there should be a formal investigation by a disciplinary committee into the information. After some preliminary matters and amendments to the Act a new committee was appointed to hear and investigate the matters raised.

The firm maintained three accounts: (a) a clients' account of which a 'C' cash book and 'C' ledger were kept and maintained; (b) a disbursement account in respect of which were kept and maintained the 'D' cash book and 'D' ledger; (c) a profit and loss account in respect of which were kept and maintained the 'P' cash book and 'P' ledger. The 'P' and 'D' accounts were both office accounts. Expenses were paid out of and fees or profit costs from clients were credited to the 'P' account. Disbursements paid on behalf of clients were paid out of the 'D' account and moneys received for reimbursements were paid into the 'D' account. When it was considered that work had been completed and all disbursements had been paid by the client, the account of the client in the 'D' books would be transferred to the 'P' books. All the different accounts would be available to the auditors to prepare the balance sheet and profit and loss account of the firm.

Held, discharging the respondent:

(1) The committee erred in relying on KT's report as evidence. It was agreed between the then counsel for the respondent and the Law Society that KT's report formed part of the information of the A-G and was not to be admitted in evidence as it was prepared in 1982 to assist the prosecution of the various income tax charges preferred against the respondent and it contained conjectures, inferences and opinions prejudicial to the respondent. The committee was apprised of the evidential status of KT's report. As such KT's report is clearly not admissible and the committee should not have referred to it in deciding the charges.

(2) As KT was an expert, he could testify to the technical aspects of the accounts and explain to the committee what those entries meant in accounting terms. He could also express his opinion on the merits or defects of the accounting system. Where these reasons consist of inferences based on certain facts, then the facts must be present or proved, otherwise they are pure conjectures.

A (3) The respondent's explanation to the first charge was rejected by the committee but there must be some evidence to show or from which inference can reasonably be drawn that he deliberately or consciously did some act with the view of omitting the said sum from the return. The fact that the return did not include this amount alone does not give rise to the inference that he did deliberately or consciously cause the transfer to be withheld or omitted from the return. There was also no evidence that the auditors were directed or requested not to include this amount of fee of \$85,000 in the profit and loss account.

B (4) The burden of establishing the first charge lies with the Law Society and it does not have the benefit of the presumption in s 96(2) of the Income Tax Act.

C (5) There is also a fatal objection to the first charge. The information referred by the A-G did not contain any allegation that the respondent had wilfully evaded payment of tax in respect of the sum of \$85,000. There was not reference in the KT report to the tax evasion of the \$85,000. As such, it could not be a subject of inquiry by the inquiry committee and did not fall within the scope of the notice given to the respondent.

D (6) As for the third charge, the \$90,000 could be received in the Banque Paribas account although the sum was from another party. It is usual for the third party borrower to pay the fees and therefore could be legitimately treated as payment of fees and disbursements to the credit of Banque Paribas. The firm would be entitled to credit it into the 'D' account and debit all disbursements although the document was headed 'Fees'. For the purpose of computing their profit cost, the firm would be entitled to deduct the total amount and treat the balance as fees. It is also unlikely that no disbursement was incurred by the firm in respect of an assignment for which such a large fee was paid, and it is not highly unusual in a law firm. All major items in the 'D' ledger B196 were supported by documentary evidence and the Law Society had not proved this charge even on a balance of probabilities.

E F (7) Whether an offence is compounded under the Penal Code or under the Income Tax Act, payment of a sum of money is exigible from the alleged offender. The fact that the payment made is a penalty, is a large sum and is imposed at the same rate applicable upon conviction of the offence by a court is not a valid ground for raising the inference of guilt against the alleged offender. On principle, the same rule in the Penal Code should apply to a composition of an offence under the Income Tax Act. The effect of a composition is that no further action can be taken by the prosecuting authority against the accused on the offence compounded or indeed any other offence in respect of which he could plead *autrefois acquit* or *autrefois convict* in respect of the offence compounded.

H (8) There are multiple reasons why a person may wish to compound an offence, for example when the burden of proof is shifted to him, he may, on grounds of practicality and expediency, compound the offence and pay the requisite fee and penalty. Considering the sequence of events and the formidable list of charges from 1978 to 1982 which the respondent faced it is not too difficult to understand why he agreed to compound the various tax evasion charges. The compositions made ought not to be considered as an admission of guilt.

I (9) As for the fourth charge, the committee relied purely on documentary evidence and the documents alone do not prove that the rewriting was intended to hide the personal expenses and that the rewritten documents were totally false. The major entries were supported by vouchers, receipts and

cheques. These were not proved by the Law Society to be fictitious or false.

(10) No adverse inference should be drawn by the failure by the respondent to produce the books for 1973. The accounts were prepared by the auditors and if remittances were taken from the 'P' account, then in all probability they would have been picked up by the auditors. There was no direct evidence that the remittances were not debited to the partners' account. The Law Society had the burden to prove that not only were the remittances debited to the 'P' account, but also that they were not included in the profit and loss account of the firm. They had not succeeded.

(11) The evidence of JY does not seem to substantiate the second limb of the fifth charge. There was no clear and precise statement to the effect that the respondent had requested her to falsify the firm's account by creating a new account in which the sum of \$34,686.83 was to be fictitiously entered. On the totality of her evidence, it is not clear precisely what she was asked to do.

(12) The admission made by the respondent in his letter to the Comptroller of Income Tax dated 16 June 1980 must be considered in the circumstances in which it was made. It was made in pursuant to the terms of the settlement reached between the prosecution and the respondent's then counsel but the settlement was withdrawn and his admission was also withdrawn in a subsequent letter of 28 July 1980. The evidence is of doubtful quality and cannot be safely relied upon.

(13) As for the sixth charge, the respondent was not charged with having committed any offence under s 96(1)(a) of the Income Tax Act. For the purpose of arriving at a settlement, a list of travelling expenses was submitted by the respondent for consideration. It was accepted by the prosecution for the purpose of a composition. In principle there is no difference between compounding an alleged offence of tax evasion in respect of which the taxpayer has not been formerly charged but the amount on which tax is alleged to have been evaded is agreed and a composition of an alleged offence of tax evasion in respect of which the taxpayer has been formally charged and the amount on which tax is alleged to have been evaded is stated in the charge and is agreed upon. In neither case can the composition be considered an admission of guilt.

(14) The committee allowed an amendment to the seventh charge by way of an addition of an alternative charge. The amended alternative charge is different from the original charge and the committee ought not to have allowed the amendment. The Law Society cannot at such a late stage introduce a new charge that was not inquired into by the inquiry committee and notice of which was not given to the respondent.

(15) On the evidence of Doris Lim it does not appear that she was asked to give false information to the police or anyone. At the time of the conversation with the respondent, she had not given any statement to the police nor had she been asked to be a witness. The initial charge of tampering with a prosecution witness or likely prosecution to prevent the due administration of justice clearly cannot be sustained.

Cases referred to

- 1 *Re an Advocate & Solicitor, ex p The Law Society of Singapore for Judicial Review* [1987] 2 MLJ 21 (refd)
- 2 *Issac Paul Ratnam v Law Society of Singapore* [1976] 1 MLJ 195 (fold)
- 3 *Re an Advocate & Solicitor* [1978] 2 MLJ 7 (refd)

A Legislation referred to

- Income Tax Act (Cap 141, 1970 Ed) ss 65C, 95(2)(a), 96(1)(a),(d), 96(2)
Legal Profession Act (Cap 161, 1985 Ed) ss 80, 84(2), 86(2), 87(1), (5)
Penal Code (Cap 224, 1985 Ed) ss 65C, 95(2)(a), 96(1)(a),(d), 96(2)

- B *CS Wu (Lim Teng Leong with him) for the Law Society.*
Jules Sher QC (Lisa Chong (Ms) with him) for the respondent.

Cur Adv Vult

- Thean J** (delivering the judgment of the court): Lim Chor Pee ('the respondent') is an advocate and solicitor of the Supreme Court and was ordered in these proceedings to show cause why he should not be dealt with under s 80 of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act').

- D These proceedings arose from a determination by a disciplinary committee ('the committee') appointed by the Chief Justice under s 87(1) of the Act that, in relation to the information referred by the Attorney General to the Law Society of Singapore ('Law Society'), which the committee had investigated, cause of sufficient gravity for disciplinary action existed under s 80 of the Act. The determination was based on six complaints or charges — the committee used the term 'charges' — framed by the Law Society which the committee found had been proved. These six charges formed the subject matter of the hearing in these proceedings, and at the conclusion of the hearing, we found that none of the charges against the respondent had been proved beyond a reasonable doubt, and, accordingly, we ordered that the order nisi to show cause made under s 95 of the Act be discharged; we also set aside the order for payment of costs made by the committee against the respondent and ordered the Law Society to pay the costs of the respondent in respect of the hearing before us. We now give our reasons.

Information

- H The charges against the respondent arose from the information referred by the Attorney General to the Law Society under what was then s 86(2) of the Legal Profession Act (Cap 217, 1970 Ed), and the information was contained in the letter dated 2 March 1983 written by Mr Glenn Knight on behalf of the Attorney General. The letter referred to the investigations conducted by the Commercial Crimes Division of the Criminal Investigation Department ('CID') and the prosecution under the Income Tax Act that followed. The material portion of the letter is as follows:

- I In connection with investigations conducted by the Commercial Crimes Division, the Income Tax Act, the following were disclosed:

Lim Chor Pee had in manipulating the accounts of the firm of Chor Pee & Hin Hiong, in particular the disbursements account sought and succeeded in fraudulently evading the payment of tax. The specific allegations of fraud are contained in a report by Keith Tay, a partner of the firm of Peat Marwick & Mitchell, a copy of which is already with you. The report specifically avers to:

- (a) The falsifying of ledger pages of the disbursement and other accounts relating to fee income received by the firm of Chor Pee & Hin Hiong for work done in respect of loan agreements entered into by International Holdings, Cho Jock Kim and Banque National de Paris et des Pays Bas (BNP). (Please see the report at pp 7-10.) This was done to conceal the fact that the income was not reported to the Comptroller but was expended instead by Lim Chor Pee and Khoo Hin Hiong for personal expenses.
- (b) Lim Chor Pee requesting his former accounts clerk, Jeannie Yim, to falsify books of account to cover up the transfer of income to Hong Kong. This was done to assist Khoo Hin Hiong to defraud the tax authorities. (See pp 6 and 7 of the report.)

These two matters were covered by Income Tax Summons No 50002/80 and 51001-51004/81. They were not withdrawn but were compounded at three times the penalty, the same penalties applicable if Lim Chor Pee was convicted under s 96 of the Income Tax Act which makes it an offence to defraud the tax authorities.

- (c) Lim Chor Pee transferring fee income to separate ledger accounts to enable personal expenses to be paid from them. Also falsifying the ledgers to cover this. This was done to evade payment of tax of this income and was intended to defraud the tax authorities. This was done in some cases by diverting a percentage of the fee income earned to a travel account and deducting personal and travel expenses of his family. See p 10 para (4) of the report.

Prior to this date, the Attorney General had written to the Law Society on 16 July 1982 forwarding: (i) a report dated 6 April 1982 prepared by Mr Keith Tay ('Keith Tay report') — this is the report referred to in the Attorney General's letter of 2 March 1983, and (ii) a statement of facts admitted by the respondent in the proceedings before the district court, namely, Income Tax Summons No 51105/81 in which the respondent pleaded guilty to and was convicted of a charge under s 95 of the Income Tax (Cap 141, 1970 Ed) ('Income Tax Act'). These two documents formed part of the information referred by the Attorney General to the Law Society.

Historical background

As the investigation of the complaints or charges and the findings by the committee touched on various matters connected with the investigation and prosecution of the respondent on the criminal charges brought against him, it is necessary to set out briefly the relevant events which led to the 'settlement' that was finally concluded in March 1982. Prior to 1979 or thereabout, the respondent was a senior partner of his firm then known as

- A Chor Pee & Hin Hiong ('the firm'). In August 1978, one of his partners, Khoo Hin Hiong ('Mr Khoo'), was convicted of the offence of abetting a criminal breach of trust by one Cho Jock Kim ('Mr Cho'). Following this, the CID commenced investigation into matters relating generally to the accounts of the firm and sought numerous files and account books of the firm; in fact, the officers of the CID went to their office on several occasions and seized various account books and files in September and October 1978. This was followed by interviews of the respondent by the CID in January and February 1979. On 28 February 1979, the respondent was served by the CID with a notice of intended prosecution of an offence of criminal breach of trust under s 409 of the Penal Code in respect of a sum of \$19,729.70. The respondent made representations to the prosecution and there followed a series of correspondence between the respondent's solicitor, Mr Joe Grimberg of Drew & Napier, and Mr Glenn Knight, the deputy public prosecutor, which, however, did not lead to any acceptable resolution of the matter in question.

On 4 October 1979, the respondent was served with four additional notices of intended prosecution in respect of:

- (i) conspiring with one Jeannie Yim to rewrite the 1973 'P' ledger account book of the firm, an offence punishable under s 120B of the Penal Code;
 - (ii) instigating Jeannie Yim to give false evidence in respect of the sum of \$19,729.70, an offence punishable under s 193 of the Penal Code;
 - (iii) giving false evidence to the CID in respect of asking Jeannie Yim to rewrite the 'P' books, an offence punishable under s 193 of the Penal Code; and
 - (iv) criminal breach of trust of 8,023,000 shares of Far Eastern Hotel Development Ltd belonging to International Holdings Pte Ltd, an offence punishable under s 409 of the Penal Code.
- G Once again, there followed a series of discussions and negotiations between the respondent's solicitor and the authorities, including negotiations with the Comptroller of Income Tax. In that connection, with a view to staving off the intending prosecution, a proposal was made to the authorities for consideration that the respondent would resign from his firm, then known as Chor Pee & Co, and cease to practise as an advocate and solicitor 'for an appropriate period'. That, however, was not accepted. Eventually, on 30 November 1979, which was just before the day the respondent was to be charged in court for criminal breach of trust in respect of the sum of \$19,729.70, Mr Grimberg on behalf of the respondent reached agreement with Mr Glenn Knight, and this was set out in a letter of that date written by Mr Grimberg to Mr Knight, as amended by a second letter of Mr Grimberg of the same date. The principal terms agreed upon were: that the respondent

would admit to facts constituting an offence under s 96(1)(d) of the Income Tax Act, namely, that he had authorized Jeannie Yim to falsify books of accounts of the firm with intent to assist Mr Khoo to evade tax; that a charge against the respondent would be framed; that if the Comptroller of Income Tax decided not to compound the offence, the respondent would plead guilty to the charge, and that if disciplinary proceedings were subsequently taken against the respondent founded on the facts constituting the offence, the respondent would admit to such facts and also 'those facts' which warranted a 'striking off'. It was also part of the agreement that the respondent would not be charged on the following day in open court with the offence of criminal breach of trust as originally scheduled.

The agreement having been reached, the next step was for the prosecution to provide a statement of facts constituting the tax offence and to frame a charge against the respondent. However, there was a lull for a period of about 5½ months until on 15 May 1980, when a complaint by one Mr Robert Kang, the Assistant Commissioner of Inland Revenue, was filed and Income Tax Summons No 50002/80 was issued; the summons was served on the respondent on the following day. The charge against the respondent under that summons was that he had in June 1978 wilfully authorized Jeannie Yim to falsify books of account of the firm with intent to assist Mr Khoo to evade tax, an offence punishable under s 96(1)(d) of the Income Tax Act. The respondent by a letter dated 16 June 1980 admitted to the complaint and requested the Comptroller of Income Tax to compound the offence, at the same time forwarding a cheque for \$50,000. This request was rejected and the cheque was returned. The Income Tax Summons No 50002/80 was mentioned in the district court in June and July 1980; but the parties failed to agree on the statement of facts. Subsequently, on 22 July 1980, the 'agreement' reached on 30 November was called off by the prosecution. The prosecution of the respondent in respect to the charges of which he had been previously notified then proceeded.

On 26 July 1980, the respondent was charged with two offences under the Penal Code, namely, criminal breach of trust of \$19,729.70 in DAC No 2795/80 (notice of which was given to the respondent in February 1979) and giving false evidence relating to asking Jeannie Yim to rewrite certain accounts in DAC No 2796/80 (notice of which was given to the respondent in October 1979). On 8 August 1980, a new charge of instigating Jeannie Yim to give false evidence relating to \$19,729.70 in DAC 2864/80 was brought against the respondent; notice of this charge was also given to the respondent in October 1979. By that date, the respondent faced a total of four charges: three charges under

A the Penal Code and one charge under the Income Tax Act. Two months later, on 23 October 1980, the respondent was served with another tax summons, namely, Income Tax Summons No 50004/80 charging him for failing to produce the 1973 'P' ledger and account books, an offence punishable under s 65C of the Income Tax Act. Then on 5 November 1980, two further charges were brought against him, namely, a charge of criminal breach of trust of \$85,118 of clients' moneys under s 409 of the Penal Code in DAC No 4491/80 and another charge of criminal breach of trust of \$40,000 of clients' moneys under s 409 of the Penal Code in DAC No 4492/80. The total charges against the respondent at the time were five charges under the Penal Code and two charges under the Income Act.

On 11 November 1980, the trial on the charge of criminal breach of trust of \$19,729.70 in DAC No 2795/80 commenced, whilst the remaining charges were stood down. The trial proceeded, and on 18 November 1980, the respondent was acquitted without his defence being called. Against the acquittal the prosecution appealed, and the appeal was heard before the Chief Justice on 4 March 1981, who dismissed it.

Shortly following this, new income tax charges were preferred against the respondent: he was served on 9 April 1981 with three new income tax summonses as follows:

- (i) Income Tax Summons No 51000/81 in which he was charged for having made, without reasonable excuse, incorrect return in 1972 by *omitting income* derived from his share of the fee of \$85,000 received from Hotel Enterprise Pte Ltd in 1971, an offence punishable under s 95(2)(a) of the Income Tax Act;
- (ii) Income Tax Summons No 51001/81 in which he was charged for having omitted wilfully with intent to evade tax from his return for the year of assessment 1974 income in respect of fees of \$90,000 received from International Holdings (Pte) Ltd, an offence punishable under s 96(1)(a) of the Income Tax Act; and
- (iii) Income Tax Summons No 51002/81 in which he was charged for having falsified books of account wilfully with intent to assist Mr Khoo to evade tax in respect of fees of \$90,000 received from International Holdings (Pte) Ltd, an offence punishable under s 96(1)(a) of the Income Tax Act.

Five days later, another three income tax summonses concerning the sums of \$85,000 and \$90,000 were issued and served on him. They were:

- (i) Income Tax Summons No 51003/84 in which he was charged for having falsified books of account wilfully with intent to evade tax in respect of fees of \$90,000 received from International Holdings (Pte)

- Ltd, an offence punishable under s 96(1)(a) of the Income Tax Act;
- (ii) Income Tax Summons No 51004/84 in which he was charged for having omitted wilfully with intent to evade tax from the partnership return of the firm for the year of assessment 1974 income from fees of \$90,000 received from International Holdings (Pte) Ltd, an offence punishable under s 96(1)(a) of the Income Tax Act; and
 - (iii) Income Tax Summons No 51005/84 in which he was charged for having made, without reasonable excuse, incorrect return in 1972 in respect of the partnership of the firm by omitting income from a fee of \$85,000 received from Hotel Enterprise (Pte) Ltd in 1971.

The respondent then faced eight charges under the Income Tax Act and four charges under the Penal Code, totaling 12 charges.

On 27 April 1981, the trial of six income tax summonses commenced in the district court whilst the other two income tax summonses and the four Penal Code charges were stood down. These income tax summonses were No 50002/80 (authorizing Jeannie Yim to falsify accounts), Nos 51004/81, 51001/81 and 51003/81 (relating to \$90,000) and No 51005/81 and 51000/81 (relating to \$85,000). The trial went on for ten days, after which both sides agreed to an adjournment with a view to working out a settlement.

Discussions and negotiations for a settlement did follow; finally, in March 1982, all the charges were negotiated and settled. Pursuant to a term of the settlement, the respondent pleaded guilty to the charge in Income Tax Summons No 51005/81, namely, making incorrect return of the firm in 1972 without reasonable excuse by omitting the fee of \$85,000 which was received from Hotel Enterprise Ltd in 1971, an offence punishable under s 95(2) of the Income Tax Act (which is an offence not involving any dishonesty). He was convicted and fined for \$5,000 and in addition he paid tax penalties in respect of himself and Mr Khoo amounting in total to \$84,854. The remaining seven income tax charges (involving dishonesty) under s 96 of the Income Tax Act were compounded by the Comptroller of Income Tax upon the respondent paying composition fees and penalties. The four Penal Code charges (all involving dishonesty) were withdrawn by the prosecution and the respondent was acquitted of these charges. In pleading guilty to the charge in Income Tax Summons No 51005/81 the respondent admitted to an agreed statement of facts, on the basis of which he was convicted and sentenced.

Following the conclusion of these proceedings the Attorney General wrote to the Law Society on 6 July 1982 forwarding a copy of the agreed statement of facts,

A the district court judge's comments in passing sentence on the respondent in Income Tax Summons No 51005/81 and a copy of the Keith Tay report. No action was taken by the Law Society, presumably because that letter did not appear to be a reference to the Law Society of information under what was then s 86(2) of the Legal Profession Act (Cap 217, 1970 Ed) ('Cap 217'). Hence came another letter from the Attorney General approximately nine months later, namely, the letter of 2 March 1983, which specifically referred to that section of the Act.

Upon receipt of the letter, the Council of the Law Society issued an order to the inquiry committee under s 86(3) of Cap 217. The inquiry committee conducted an inquiry and thereafter submitted its report on 24 August 1983 to the Council of the Law Society recommending that there should be a formal investigation by a disciplinary committee into the information against the respondent. Accordingly, the Chief Justice on 14 October 1983, on application by the council, appointed a disciplinary committee to hear and investigate the matter. Following the appointment of that committee, a statement of case dated 13 March 1984 was prepared on behalf of the Law Society and forwarded to the respondent together with a copy of the letter of 2 March 1983 from the Attorney General. The committee commenced its hearing on 13 July 1984. At the hearing, the respondent's counsel applied for an order to delete certain charges of the statement of case, which application was acceded to by the committee. The Law Society then applied to the High Court for an order of mandamus directing the committee to hear all the charges framed by the Law Society. The High Court allowed the application and made the order of mandamus on 2 April 1985. The respondent appealed to the Court of Appeal; the appeal was heard in October 1985 and was dismissed with costs: *Re an Advocate & Solicitor, ex p The Law Society of Singapore for Judicial Review*.¹ Thereafter, there were certain amendments to the Legal Profession Act, as a result of which the appointment of that disciplinary committee (made in October 1983) was revoked and a new disciplinary committee, ie this committee, was appointed to hear and investigate the matters raised in the information.

H The statement of case presented by the Law Society against the respondent before the committee contained seven complaints or charges. The committee dealt with each of the seven charges separately and found that the charges had been proved and that in respect of six of them the respondent was guilty of grossly improper conduct. The committee therefore determined that cause of sufficient gravity for disciplinary action existed under what was then s 84(2) of Cap 217 and what is now s 80(2) of the Act.

Accounting system

It is necessary in order to understand the charges and the evidence led in support thereof to explain and set out briefly the accounting system adopted by the firm at the material time. There were three accounts kept and maintained by the firm, namely:

- (i) a clients' account, in respect of which 'C' cash book and 'C' ledger were kept and maintained, and the moneys in the clients' account were placed with Citibank NA (then known as First National City Bank);
- (ii) a disbursements account in respect of which were kept and maintained the 'D' cash book and 'D' ledger, and the moneys in this account were placed with The Bank of Singapore Ltd and American Express Banking Corp;
- (iii) a profit and loss account, in respect of which were kept and maintained the 'P' cash book and 'P' ledger, and the moneys in this account were placed with Far Eastern Bank Ltd and also in a separate account with Citibank NA.

The clients' account is not relevant for the purpose of these proceedings. The 'P' and 'D' accounts were both office accounts of the firm. The general office expenses, such as salaries, rents, and partners' drawings and distributions were paid out of, and fees or profit costs from clients were credited to, the 'P' account and recorded in the 'P' cash book and ledger. These accounting records were accessible only to partners and senior account clerks of the firm. Disbursements paid on behalf of clients were paid out of the 'D' account, and moneys received from clients for reimbursement of disbursements were paid into the 'D' account. All these transactions were recorded in the 'D' cash book and ledger, and these books were accessible to every lawyer and member of the staff. Generally, when a client paid to the firm an amount comprising fees and disbursements or to account of fees and disbursements, the amount would be paid into the 'D' bank account, and an official 'D' receipt would be issued; this sum would then be credited to the 'D' ledger. When a disbursement was paid for the client, the money would be taken from the 'D' account and the amount standing to the credit of this client would then be correspondingly reduced. At a later stage when it was considered that the work had been completed and all the disbursements had been paid for the client, the account of the client in the 'D' books would be closed, and the credit balance of this client in the 'D' books would be transferred to the 'P' books; a cheque would be drawn on the 'D' bank account and credited to the 'P' bank account. Transfer from 'D' account to the 'P' account was not the only way in which fees were paid into the 'P' account. There were other ways where fees were paid into the 'P' account. For instance, where a payment was made by a

A client, such as payment made on a bill or other payment made without any bill and no disbursements were involved, such payment would be made to the 'P' account and a 'P' receipt would be issued. Another payment into the 'P' account would be a transfer of the fees from the clients' account after completion of the transaction in question. Only fees were paid into the 'P' account.

B At the end of the year or soon thereafter, the firm's auditors (Chan Sze Onn & Co and later Kenneth Kwan & Co), who also acted as accountants for the firm, would prepare the balance sheet and profit and loss account of the firm for the accounting year, and such account would be submitted with the firm's tax return to the income tax department. The account books, 'C', 'P' and 'D' books, were available to the auditors for the purpose. The system of income recognition of the firm was on the basis of cash received plus bills unpaid at the end of the year.

D First charge

We now turn to the seven charges preferred against the respondent before the committee and propose to consider each of them seriatim. The first charge is as follows:

E On or about 5 October 1971, the firm received from First National City Bank a cashier's order for \$160,209.50 in settlement of the firm's fee note bearing reference LCP/AA/vc/960/71 and dated 20 September 1971. Out of this payment, a sum of \$85,000 represented the firm's profit cost for professional services rendered. The respondent caused the said cashier's order to be credited to the firm's 'D' account, and omitted transferring to the firm's 'P' account the said profit cost of \$85,000.

F On 31 January 1972 the Comptroller of Income Tax pursuant to the provisions of ss 63 and 64 of the Income Tax Act required the respondent as the firm's precedent partner to submit the returns of the firm's income for the year ending 31 December 1971. In the returns submitted by the respondent, the said profit of \$85,000 earned by the firm was omitted therefrom, and by doing so, the respondent wilfully evaded the payment of income tax chargeable to him and his then partner Khoo Hin Hiong for the year of assessment 1972 in respect of that sum.

G The material facts in relation to this charge, which were not in dispute, are these. In 1971, the firm acted as solicitors for Citibank NA (then known as First National City Bank) who had agreed to lend a sum of \$15m to a company called Hotel Enterprise (Pte) Ltd ('Hotel Enterprise'), the then owners of the Holiday Inn Hotel. The respondent was the solicitor in charge of the matter. As security for the loan, Hotel Enterprise agreed to execute a mortgage and debenture on its property and assets in favour of the bank, and they appointed the firm of M/s Wee Swee Teow & Co to act for them. It was a term of the loan that Hotel Enterprise would pay the cost of the solicitors acting for the bank, ie the respondent's cost. Accordingly, immediately prior to

the completion of the mortgage and debenture a bill was prepared by the firm for a total sum of \$160,209.50, of which \$85,000 represented the legal fee or profit costs. Hotel Enterprise authorized the bank to pay the bill out of the loan which was to be disbursed by the bank. On 5 October 1971, or thereabout, the bank issued a cashier's order for \$160,209.50 to the respondent's firm. The cashier's order was received and paid into the 'D' account maintained with Citibank NA. Various disbursements were paid out of the 'D' account in respect of the transaction and the amount of fee or profit costs of \$85,000 was not transferred from the 'D' account to the 'P' account in 1971. The work in connection with the mortgage and debenture was completed that year. In the following year, the respondent as the precedent partner of the firm submitted a return of income tax of the firm for the year of assessment 1972 in respect of the income earned by the firm for the year ended 31 December 1971. The respondent in submitting the return omitted to include therein the fee of \$85,000. In consequence, the income of the respondent and that of his equal partner, Mr Khoo, was reduced each by a sum of \$42,500, and the tax payable by each of them in respect of such sum would have been \$21,177.20.

Subsequently in 1973, Hotel Enterprise gave notice to the bank to redeem the loan and to have the mortgage and debenture discharged. The respondent's firm again acted for the bank, and in connection with the redemption and discharge of the mortgage and debenture, the firm acting for the bank presented a bill to Hotel Enterprise for a sum of \$148 as fees.

This amount was paid by Hotel Enterprise and was also credited to the 'D' account.

With effect from 1 January 1974, the respondent and his partner, Mr Khoo, admitted into their partnership on an equity sharing basis three new partners, and it was specifically agreed that the new partners would not be entitled to any share of the fees of \$85,000 and \$148 as moneys earned prior to 1974. In January 1974, the sum of \$85,000 was transferred from the 'D' account to the 'P' account of the firm. Initially, this sum was credited to the fee ledger, but subsequently was treated as a loan to a company owned by a respondent and his partner, Mr Khoo. This amount was distributed to them in equal shares as a part of their pre-1974 profits, and it was utilized to off set the drawings of both of them for the year ended December 1974. In 1975, another accounting exercise was carried out in respect of this amount and by the drawing of cheques and making of entries in the books, this amount was reversed out and was transferred to the fees account and was then treated as income for 1975, and it was included in the income tax return for the year of assessment 1976. The respondent did not dispute that these

A transactions in the accounts of the firm were carried out in his instructions.

B These then were the material primary facts before the committee, and the question is whether they are sufficient to sustain the charge against the respondent. The committee found that the charge had been established and arrived at the conclusion as follows:

C In this case, having considered all the evidence put before us by both parties and having considered all the surrounding circumstances and the submissions made by counsel for the respondent and by counsel for the Law Society we have no doubt at all that the said fee of \$85,000 was intentionally omitted from the return made to the Comptroller of Income Tax in respect of the profits of 1971 in order to evade payment of income tax on it.

In coming to this conclusion, the committee relied on the evidence of Mr Keith Tay, and in particular the Keith Tay report. At p 51 of its report, the committee said:

D The respondent's contention is also not supported by Mr Keith Tay, the expert witness called by the Law Society. He expressed the opinion that an auditor would have no means of verifying that all fee income had been transferred to the 'P' account.

E The committee then quoted in a somewhat extraordinary way extracts from pp 3 and 4 of the Keith Tay report and combined them into three continuous paragraphs with the last paragraph ending as follows:

The defects of the system (ie the accounting system of the firm) were exploited to conceal the offences which were the subjects of the income tax charges brought against the respondent.

F In relying on the Keith Tay report as evidence, the committee, with respect, erred. First, we were informed by counsel for the respondent, and this was confirmed by counsel for the Law Society, that it was agreed between the counsel then acting for the respondent before the committee and counsel for the Law Society that the Keith Tay report was not to be admitted in evidence before the committee for the simple reason that that report was prepared in 1982 to assist the prosecution of the various income tax charges preferred against the respondent and it contained conjectures, inferences and opinions prejudicial to the respondent. Accordingly, Mr Keith Tay was requested by the Law Society to prepare a fresh report, which he did, and the fresh report dated 16 June 1987 was admitted and marked 'L15'. The earlier report of Mr Keith Tay, which we have referred to as 'the Keith Tay report', formed part of the 'information' referred by the Attorney General to the Law Society and was marked 'L28' but was not admitted in evidence. We were also informed that the committee was apprised of the evidential status of the Keith Tay report. This being the position, the Keith Tay report clearly is not admissible in evidence and the committee should not have referred to

it at all in deciding on this and other charges. Equally the committee should not have referred to it at the introductory part of its report, where a substantial portion of the Keith Tay report was liberally quoted, which also ended with the same prejudicial conclusion. That conclusion Mr Keith Tay might be permitted to make in his report which was addressed to Mr Glenn Knight, the deputy public prosecutor, to assist in the prosecution but he was certainly not entitled to express such a conclusion at the hearing before the committee. Indeed, on the evidence before the committee such a conclusion was wholly unjustified.

Secondly, it is absolutely essential that the nature of the evidence of Mr Keith Tay should be properly appreciated. Mr Keith Tay is a public accountant and was called by the Law Society as an expert witness. As an expert, he could testify and express his opinion on technical aspects of the accounts; he could also assist the committee by taking the committee through the various books of accounts and entries therein and explain to the committee what those entries meant in accounting terms and explain the accounting system of the firm to the committee. He could also express his opinion on the merits or defects of the accounting system of the firm and give his reasons in support. Where these reasons consist of inferences based on certain facts, then the facts must be present or proved; otherwise they would be based on certain assumptions and are themselves pure conjectures. Plainly, Mr Keith Tay had no direct personal involvement in the preparation of the accounts and he could give no direct evidence as to the various entries made and the true reasons for such entries. Hence, even if the Keith Tay report is admissible, those extracts quoted by the committee should be considered with caution. They consisted of conjectures, inferences and opinions based on facts which had not been established, and could not be accepted or relied on as cogent evidence in support of the charge against the respondent.

It is important to appreciate also that the crux of the charge against the respondent was that he wilfully evaded payment of tax by omitting the fee of \$85,000 in the income tax return for the year ended 31 December 1971. That return was made in 1972. The respondent's explanation was that the omission was due to an oversight. Assuming that this explanation was rejected, as it was so rejected by the committee, there must be some evidence to show, or from which inference can reasonably be drawn, that the respondent deliberately or consciously did some act with the view to omitting the said sum from the return. True it is that the fee of \$85,000 was not transferred from the 'D' books to the 'P' books and that the return did not include this amount of fee. In our opinion, this fact alone does not give rise to the inference that the respondent deliberately or consciously

A caused the transfer to be withheld and caused this amount of fee to be omitted from the return. The 'D' books and the 'P' books were account books available to the auditors who were also the accountants of the firm, and the profit and loss account of the firm was prepared by the auditors. The auditors are an independent firm of public accountants, and the accountant in charge of auditing the accounts and preparing the profit and loss account of the firm was not called by the Law Society to testify. There is no evidence before the committee that the auditors were directed or requested not to include this amount of fee of \$85,000 in the profit and loss account for 1971; nor was there any evidence from which such an inference can be drawn. There is also no evidence that in preparing the profit and loss account the accountant would only look at the 'P' books and would only refer to specific accounts in the 'D' books if instructed by the respondent or other partner of the firm, and that no such instruction had been received in respect of the fee of \$85,000. We are unable to accept the committee's inference from the evidence that unless the respondent disclosed to the auditors that there was an untransferred fee of \$85,000 lying in the 'D' account, there was virtually no way in which the said sum could have been spotted by the auditors for inclusion in the 1971 profit and loss account. This inference was based on the Keith Tay report, which is not admissible in evidence, and there are no facts to support the inference.

In taking on the burden of establishing this charge against the respondent, the Law Society does not have the benefit of the presumption found in s 96(2) of the Income Tax Act; it is therefore incumbent on the Law Society to adduce evidence to prove the charge. The burden is not on the respondent to prove that he had not evaded payment of tax on the fee of \$85,000.

It appears, and the evidence does bear this out, that in 1972 or latest by 1973, the respondent was aware that the amount of \$85,000 was still lying in the 'D' account. However, it does not necessarily follow that he also knew at that time that that sum was not taken into the profit and loss account of the firm for 1971 and that in submitting the 1972 return he deliberately omitted the sum. It is true that in 1974 this amount of \$85,000 was transferred from the 'D' account to the 'P' account of the firm, and certain accounting entries were made in the books of the firm in relation to this amount; it was distributed to the respondent and Mr Khoo in equal shares first as a loan and subsequently as their share of profits and was treated as income earned in 1975. These, however, occurred in 1974 and 1975 and were after the event, namely, the submitting of the 1972 return, and they were not the matters of which the Law Society was complaining. At any rate, they cannot form a basis for an inference that in making and submitting the income

tax return in 1972 the respondent deliberately omitted this amount from the return. In our judgment, the Law Society had not, on the evidence before the committee, discharged the burden of proving the charge beyond a reasonable doubt, and we are unable to accept the finding of the committee on this charge.

Quite apart from what we have held, there is a fatal objection to this charge. The information referred by the Attorney General to the Law Society on 2 March 1983 did not contain any allegation that the respondent had wilfully evaded payment of tax in respect of the sum of \$85,000. Counsel for the Law Society relied on the Keith Tay report which was part of the information. However, this report also did not contain any specific reference to the tax evasion of the \$85,000. Consequently, the subject matter of this charge was not contained in and was not part of the information referred by the Attorney General to the Law Society, was not and could not be a subject of inquiry by the inquiry committee and did not fall within the scope of the notice given by the inquiry committee to the respondent under what was then s 87(5) of Cap 217. The provision of s 87(5), so far as relevant, is as follows:

Before the Inquiry Committee commences its hearing in respect of any matter

- (a) the Inquiry Committee shall post or deliver to the advocate and solicitor concerned —
 - (i) copies of any written application or complaint and of any statutory declarations or affidavits that have been made in support of the application or complaint; and
 - (ii) a notice inviting the member concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to the Inquiry Committee any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee;

In our judgment, the Law Society cannot frame a charge which was not contained in the 'information' referred by the Attorney General to the Law Society and notice of which was not given by the inquiry committee under that section; see *Isaac Paul Ratnam v Law Society of Singapore*.² In that case, the inquiry committee inquired into complaints against one Isaac Paul Ratnam which were contained in the information referred by the Attorney General to the Law Society and reported its findings to the Council of the Law Society. The council then considered the report and determined that a formal investigation was necessary, and on its application the Chief Justice appointed a disciplinary committee to investigate the complaints. Soon thereafter, Ratnam was convicted in the magistrate's court of the charge of instigating the dishonest removal of certain property (which was one of the complaints by the Attorney General). Immediately after his conviction, the inquiry

A committee acting on its own motion under what was then s 87(1)(b) of Cap 217 inquired into and considered the matter of Ratnam's conviction but without giving any notice to him under s 87(5) of Cap 217. The inquiry committee reported to the council and subsequently the same disciplinary committee was appointed to investigate the matter. It was held by the Privy Council that the requirement of giving notice by the inquiry committee under s 87(5) was imperative. Lord Simon, delivering the judgment of the Board said, at p 200:

... Section 87(5) must be construed as either imperative or directory for all cases which it affects, as the citation from Lord Penzance's judgment suggests. Although the instant appellant suffered no prejudice nor failure of natural justice there could well be cases where serious prejudice might be suffered and omission to give notice might well result in such a failure. It is not a light matter for a professional man to have to appear before a disciplinary committee of his professional body. The person who is the subject matter of enquiry might well have such an answer as to ensure that the report of the inquiry committee so exculpates him that the Law Society may determine either that no formal investigation is necessary under s 88(1)(a) or that the case may be met by a small penalty under s 88(1)(b) and s 89. (Their Lordships have not thought it necessary to set out these provisions, which sufficiently appear from the foregoing.)

Their Lordships therefore consider that s 87(5) should be construed as an imperative provision. This involves that the second inquiry by the inquiry committee was a nullity.

This objection was raised and argued before the committee and it was held that the *Ratnam* case² was not applicable. We disagree. In our opinion, the point raised falls squarely within the principle laid down in that case.

F The committee also held that this objection was raised by the respondent before the Court of Appeal in *Re an Advocate & Solicitor, ex p The Law Society of Singapore for Judicial Review*¹ and was rejected by the court. In particular, the committee relied on the following passage of the judgment of the Court of Appeal delivered by Lai Kew Chai J at p 33:

G It could not, in our view, be asserted before us that the allegations set out in the statement of the case against the appellant are not a fair and accurate summary of the allegations set out in the written information of the Attorney General and in the accompanying documentary annexures. Nor could it be asserted by the appellant that the Law Society's statement of case against the appellant was not based on the six charges framed by the Law Society of which notice had been duly given to the appellant under s 88(2) of the Act. Accordingly, there can be no suggestion that any allegation outside those contained in the information of the Attorney General was added to the statement of the case against the appellant of which the appellant had no notice when he appeared before the inquiry committee, thereby resulting in any failure of natural justice.

H The above passage must be understood in the context in which it was made and was no more than a background introduction leading to the point in issue in that appeal. The issue there raised was different. It was there

argued, among other things, that the inquiry committee in its report to the council had identified and demarcated the area which required formal investigation by the disciplinary committee. The Court of Appeal, while accepting that it was open to the inquiry committee in its report to state those complaints in respect of which there should be formal investigation, held that it could not be said that the inquiry committee had in its report recommended that no formal investigation by the disciplinary committee was required on any of the matters into which it had carried out the investigation. It was never argued before the court that this charge was not within the scope of the information referred by the Attorney General to the Law Society under s 82(2) of the Act. The decision in *Ratnam*² was not raised at all.

Second charge

The second charge against the respondent is as follows:

On 29 March 1982, the respondent was convicted of an offence under s 95(2)(a) of the Income Tax Act in Income Tax Summons No 51005/81 and was fined \$5,000.

By reason of the matters referred to in para 13 above, the respondent was convicted of a criminal offence implying a defect of character which makes him unfit for his profession.

The committee found that the conviction of the offence under s 95(2)(a) of the Income Tax Act did not warrant an adverse finding under s 80(2)(a) of the Act. Accordingly, no cause of sufficient gravity in respect of this charge was found by the committee.

Third charge

We now come to the third charge which is as follows:

In 1973 the firm received from Cho Jock Kim and International Holdings Pte Ltd a sum of \$90,000 as profit costs for professional services rendered. As the firm's precedent partner, the respondent, wilfully and with intent to evade payment of income tax, omitted declaring the said sum of \$90,000 earned by the firm in the returns of the firm's income for that year.

To sustain this charge, the Law Society has to prove:

- (i) that the sum of \$90,000 was omitted from the 1973 profit and loss account, and
- (ii) that it was omitted wilfully with intent to evade tax on it.

The evidence before the committee showed that in 1973 the firm received from International Holdings (Pte) Ltd a cheque dated 29 November 1973 for \$90,000. The firm's receipt was issued for this amount stating that the amount was received 'being towards disbursements and fees' and the amount was paid into the 'D' bank account and was recorded in the 'D' ledger.

No bill was issued by the firm for this amount. In connection with this sum of \$90,000, there was also a

document headed 'Fees' dated 26 November 1973, which we shall set out in some detail in a moment. This document was marked 'R17'. According to the respondent, and this appears not to be in dispute, the matter was handled by the respondent's partner, Mr Khoo. The matter in question was a loan transaction between Banque de Paris et des Pays Bas ('Banque Paribas') and Mr Cho/International Holdings (Pte) Ltd. The amount was entered in the 'D' ledger No B196. The 'D' ledger B196 contained the name of the client: 'Banque De Paris' and the subject matter: 'Agreements with Cho Jock Kim'. On this ledger, there were several debit entries, and among them were two debit entries, namely, \$53,991 and \$9,199.60 made on 4 February and 6 February 1974 respectively which were transfers of these two amounts to the 'P' account of the firm. In support of the ledger B196 the respondent produced a bundle of documents consisting of copies of cheques, vouchers and receipts which substantiated all the major entries in the ledger B196. Purely on the documentary evidence alone, the accounting entries show that of the amount of \$90,000 received in November 1973 a total amount of \$63,119.60 was transferred to the 'P' account in 1974 and various other sums over the period from December 1973 to January 1974 were disbursed.

The committee, by a majority, with one of its members, Mr Michael Hwang, dissenting, on the basis of the evidence of Mr Keith Tay and the documentary evidence, found that no portion of the fees of \$90,000 received from Mr Cho or International Holdings (Pte) Ltd in November 1973 was ever transferred to the 'P' account of the firm and was satisfied beyond a reasonable doubt that the respondent, wilfully and with intent to evade payment of income tax, omitted declaring the said sum of \$90,000 in the return of the firm's income for the year 1973 and that there was no evidence that it was declared in the returns of any other years.

With respect, we are unable to accept this finding of the committee. First, the committee relied on the Keith Tay report and quoted a lengthy passage therefrom. This report was never put in evidence and ought not to have been relied upon at all. The committee also relied on the evidence of Mr Keith Tay as to what transpired and agreed upon during the negotiations for the composition of the offences, eg what was not accepted and what was accepted by the prosecution for the purpose of compounding the offences alleged in this charge and in the fourth charge and the respondent's agreement to the composition and payment of a penalty of 300% on the amount of tax alleged to have been evaded. Such evidence, in our opinion, has hardly any probative value. Mr Keith Tay had no direct personal knowledge on the transactions in question and could give no direct evidence on the matter in issue.

Next, we come to the 'D' ledger B196. The respondent admitted that the 'D' ledger B196, which contained the entries showing how the sum of \$90,000 was applied, was a rewritten page of 'D' ledger. The respondent explained that the original account had mistakes, which upon corrections became messy, and hence it had to be rewritten, and it was so rewritten. The committee rejected this explanation and the basis for doing so is this. There is another page of the 'D' ledger which was also rewritten, and that was numbered as B196A. These two pages, the committee held, were not 'the genuine original pages' of the account; if B196 was compared with B196A it would be seen that the account in B196A was not a continuation of the account in B196, and hence the account as reflected on these two pages was not a running account. B196 showed a 'separate and distinct account' specially prepared to show how the sum of \$90,000 was dealt with. There is another page of B196 which the committee treated as 'the original B196'; and the heading thereof showed that it was a Banque Paribas account. The respondent admitted that B196 was a Banque Paribas account in the 'D' ledger and that being so, the committee found it inexplicable how the \$90,000 received from International Holdings (Pte) Ltd was reflected in the rewritten B196 which was not the 'D' ledger account of that company.

We have two observations on the committee's analysis of this evidence. First, the rewritten B196A was not really a continuation of the account in the rewritten B196. The account in the rewritten B196 was closed with the transfer of the balance of \$9,199.60 to the 'P' account on 6 February 1973. The rewritten B196A came about later, arising from the agreement with the client, Mr Cho, for the refund of a part of the fee amounting to \$30,000, which was transferred from the 'P' account to the 'D' account — that formed the subject of the next charge against the respondent, which we shall discuss in a moment. Secondly, as to why the amount should be credited to the 'D' ledger of Banque Paribas, it seems to us that the explanation is a simple one, and it is this. The sum of \$90,000 was received in connection with the transaction of a loan given or to be given by the bank to that company and the firm probably acted for both of them. As is the practice, a borrower invariably pays the fees of the bank which lends the money, and accordingly the amount received from International Holdings (Pte) Ltd could be legitimately treated as payment of fees and disbursements for that transaction and credited to the account of Banque Paribas.

Lastly, the committee relied on exh R17, in which, it said, 'the source of the \$90,000' was shown 'very clearly'. R17 was headed 'Fees' and bore the following typewritten notes:

A	Singapore Hilton	\$60,000
	KL Hilton	\$20,000
	Rama Hyat	\$10,000
		<u>\$90,000</u>

Below these notes were handwritten notes which appeared to have been written by Mr Cho addressed to his manager and directing that the 'above amount of \$90,000' be put 'at the disposal of Mr Khoo Hin Hiong'. At the bottom was a further handwritten note: 'Pay Chor Pee & Hin Hiong' below which were two signatures, one of which appeared to be Mr Khoo's. On the strength of R17, the committee found that it was an instruction by a client to issue a cheque for 'Fees'; that the cheque received was for fees and did not include disbursements, and that the whole amount 'should have gone to the 'P' account straightaway upon receipt'. This document, in our view, is equivocal and does not really go very far in proving that the whole of the sum of \$90,000 was to be treated solely as fees. Assuming that, so far as the client, Mr Cho, was concerned, it was to be treated as payment of fees only, the firm would still be entitled to credit it to the 'D' account and debit to that account disbursements incurred in carrying out the work for which the amount was paid and for the purpose of computing their profit cost would still be entitled to deduct the total amount of disbursements from that amount and treat the balance thereof only as fees. It is highly unlikely that no disbursement was incurred by the firm in respect of an assignment, for which such a large fee was paid. The respondent explained that it was the firm's practice to transfer the net fees on the completion of the transaction, even if the amount, comprising fees and disbursements, was received earlier. This is a perfectly plausible explanation. Such a practice does not strike us as highly unusual in a law firm. At any rate, as Mr Hwang held and we agree with him, there was evidence that work was done on the matter in question after December 1973. There was also evidence that disbursements on the matter were incurred after that date.

On the basis of R17 the committee found that Banque Paribas had nothing to do with the amount of \$90,000 from International Holdings (Pte) Ltd and it did not come from the bank and that there was no evidence at all that the disbursements shown on the rewritten B196 were in fact incurred in respect of the work done for which the fee of \$90,000 was received from International Holdings (Pte) Ltd. In support of this, the committee relied on what was agreed at the negotiations for the composition of the offence. The committee then held that the rewritten B196 was a 'completely fictitious and false account, specially prepared to cover up the respondent's wilful evasion of tax on the \$90,000 fee received from International Holdings (Pte) Ltd'.

On our analysis of the evidence, the findings of the committee on this charge cannot be supported. All the major items in the 'D' ledger B196 were supported by documentary evidence, and all the debit entries in the 'D' ledger B196 were not contested by the Law Society. The respondent was not cross-examined on the entries, and before us, counsel for the Law Society conceded that he could not dispute that these entries were properly made. In fact, near the end of his submission, counsel further conceded that this charge had not been established beyond a reasonable doubt. That was the conclusion of Mr Michael Hwang, the dissentient member of the committee. In our judgment, the Law Society had not proved this charge even on a balance of probabilities.

We now come to the last question raised in connection with this charge: whether compounding the offence of tax evasion by the respondent and payment by him of a penalty of 300% on the tax due on \$26,809.40, which is the same penalty he would have to pay, if convicted by court, can be considered as an implied admission of a wilful evasion of tax on \$26,809.40 alleged to have been omitted from the profit of the firm for tax purposes. The committee held that composition of an offence under the Income Tax Act was a factor which could legitimately be taken into consideration together with all other evidence in considering the guilt of the respondent on a disciplinary charge under the Act. The committee distinguished such a composition from a composition permitted under s 199 of the Criminal Procedure Code ('the Code'). The committee held that s 199 applies only to those offences under the Penal Code which are stated to be compoundable in Schedule A of the Code and is inapplicable to an offence under the Income Tax Act. In the case of an offence under s 96(1) of the Income Tax Act, s 96(3) empowers the Comptroller of Income Tax to compound it, and there is in that Act no equivalent provision of s 199(4) of the Code which expressly provides that a composition of an offence under that section has the effect of an acquittal. That being the position, the committee held that a composition of an offence under the Income Tax Act would constitute an admission of guilt; its reasoning is set out in the following passage of its report:

It has been said that a man may have any number of reasons for compounding a case and the composition does not indicate admission of guilt. That may well be correct in a civil case where the plaintiff is agreeable to a composition as well as in a criminal case where the complainant is likewise agreeable and the case is compounded. In such a case, in the absence of any penalty or punishment suffered by the defendant, it would be wrong to imply admission of guilt on his part. But there is a world of difference between such compositions and the composition of an offence under the Income Tax Act where the offence is compounded on the payment of the same penalty which the taxpayer would have had to pay upon conviction in court. And where the

amount of the penalty is large, the inference of guilt is irresistible. No reported decision in any jurisdiction has been cited to us, in which it has been held that the composition of an income tax offence by the payment of penalties equal to those payable upon conviction in court does not give rise to an inference of guilt.

In the opinion of this committee, where a taxpayer pays a large sum of money at the rate payable upon conviction in court to compound an offence under the Income Tax Act, it is reasonable to infer as a matter of common sense that the taxpayer is guilty of that offence because no person in his proper mind will do that if he is really innocent.

With respect, we are unable to accept this reasoning. Whether the offence is compounded under the Code or under the Income Tax Act, payment of a sum of money is exigible from the alleged offender. The fact that the payment made is a penalty, is a large sum and is imposed at the same rate applicable upon conviction of the offence by court is not a valid ground for raising the inference of guilt against the alleged offender. We accept that there is no equivalent in the Income Tax Act of sub-s (4) of s 199 of the Code. However, in our opinion, on principle, the same rule should apply to a composition of an offence under the Income Tax Act, or to put it negatively composition of an offence by an alleged offender cannot constitute an admission of guilt against him. The effect of a composition is that no further action can be taken by the prosecuting authority against the accused on the offence compounded or indeed any other offence in respect of which he could plead *autrefois acquit* or *autrefois convict* in respect of the offence compounded.

There are multiple reasons why a person may wish to compound an offence, whether it be an income tax offence or an offence compoundable under the Code, without any admission of guilt. In particular, in the case of a taxpayer being charged for tax evasion under s 96 of the Income Tax Act, where the burden of proof is shifted to him, he may, on grounds of practicality and expediency, if agreeable to the Comptroller of Income Tax, compound the offence and pay the requisite composition fee and penalty. In the instant case, the committee took an unsympathetic view of the circumstances in which the respondent compounded the various income tax charges and paid substantial amounts as penalties. The committee said:

It was submitted by counsel for the respondent, that the compositions in this case were not admissions of guilt but the result of 'commercial horse-trading' and buying of peace because of harassment of the respondent by Mr Glenn Knight. The committee is unable to accept this submission because it is entirely groundless. Mr Glenn Knight gave evidence before this Committee. It was never put to him that the respondent agreed to the compositions in order to buy release from his harassment and thus obtain peace of mind. The respondent's troubles are of his own making and it is most improper on his part to make such serious allegations against an officer who was merely doing his duty.

If one looks at the sequence of events starting from 1978 to the date of finalization of the settlement in 1982 it is not too difficult to understand why the respondent agreed to compound the various tax evasion charges. Over a period of approximately four years various charges were brought against him, one after another, culminating in eight charges under the Income Tax Act and four charges under the Penal Code, which he faced at the time of the settlement. On any view, this is a formidable list of charges. We find that it is unrealistic in the circumstances to reject, as the committee did, the suggestion that the composition in this case was a result of 'commercial horse-trading' and 'buying of peace'. We agree entirely with the views of Mr Michael Hwang that while there is no substance in the suggestion or allegation of any improper conduct by Mr Glenn Knight, a person in the respondent's position would have been under considerable pressure to come to some form of a settlement with the authorities to bring an end to the prolonged criminal investigations into his affairs regardless of his guilt or innocence. In our judgment, the compositions made by the respondent ought not to be considered as an admission of guilt.

Fourth charge

The fourth charge against the respondent is as follows:

In December 1974, the respondent, wilfully and with intent to evade payment of income tax, caused a sum of \$30,000 to be transferred from the firm's fee income in the 'P' account to the firm's 'D' account, falsely describing the transfer as a 'refund'. The said sum of \$30,000 was credited to Banque de Paris et des-bas's ledger at page B196, and the money was used for payment of the respondent's and the said Khoo Hin Hiong's personal bills that were improperly debited to that ledger.

In or about 1978, the respondent caused the said ledger card bearing page B196 to be rewritten, and replaced the original ledger card with two rewritten ledger cards bearing B196 and B196A. In the rewritten ledger cards, the original entries were falsified to conceal the items of personal bills debited to the account. Further, the original 'refund' entry of \$30,000 was rewritten to reflect as though the sum had been received from clients to meet disbursements properly incurred on their behalf.

This charge is extremely verbose and may be broken down essentially to the following allegations:

- (i) The respondent caused a sum of \$30,000 to be transferred from the 'P' account to the 'D' account falsely, describing the transfer as a refund with the intent to evade payment of income tax.
- (ii) The said sum of \$30,000 was used for payment of the respondent's and Mr Khoo's personal bills which were improperly debited to the ledger.
- (iii) The respondent in 1978 caused the said ledger card bearing B196 to be rewritten and replaced by two new ledger cards bearing B196 and B196A and the rewritten ledger cards contained falsified

- A entries to conceal the items of personal bills debited to the account, and
- (iv) The original 'refund' entry of \$30,000 was rewritten to reflect as though the sum had been received from clients to meet disbursements properly incurred on their behalf.
- B In seeking to prove these allegations, the Law Society tendered in evidence the following documents derived from the respondent's account books, namely:
 - (i) a 'P' voucher for \$30,000 dated 31 December 1974 which appeared to show that a sum of \$30,000 was transferred from the 'P' account to the 'D' account and was described as a 'Refund' from 'Fees and Costs' in respect of 'CPHH 'D'/Paribas', and which was initialled by the respondent;
 - (ii) the 1974 'P' fees and cost ledger;
 - (iii) a photocopy of a B196 ledger from an 'orange' file found in the store of the firm, which we shall refer to as the 'orange B196';
 - (iv) the rewritten 'D' ledger B196 and B196A, which we shall refer to as 'rewritten B196 and B196A' respectively; and
 - (v) 1975 'D' cash book.
- C
- D

The respondent admitted that a sum of \$30,000 was transferred from the 'P' account to the 'D' account in December 1974. His explanation was that this transfer had been made on the instruction of Mr Khoo conveyed to him through an account clerk. He said that Mr Khoo had apparently come to an agreement with his client, Mr Cho/International Holdings (Pte) Ltd, that there would be a refund of fees in the sum of \$30,000 and that Mr Khoo's instructions were to transfer the sum of \$30,000 to the 'D' account to be held for the credit of International Holdings (Pte) Ltd. The respondent further said that subsequently he was informed by Mr Khoo that he had a disagreement with Mr Cho and had decided that since Mr Cho owed him a larger sum of money, the sum of \$30,000 would not be refunded but would instead be applied by the respondent and Mr Khoo for their own use. As Mr Khoo also owed the respondent money the said sum of \$30,000 was then applied by the respondent and Mr Khoo against personal expenses but had been wrongly debited to Banque Paribas ledger. The respondent further said that at a later stage Mr Khoo informed him that there had been a further discussion between him and Mr Cho, as a result of which it was agreed that the \$30,000 would not be refunded but would be treated as payment towards future travelling expenses which Mr Khoo was to undertake in relation to Mr Cho's transactions. Accordingly, the \$30,000 was credited to B196A of the 'D' ledger of Banque Paribas and applied against travelling expenses and other disbursements.

The committee rejected the respondent's explanation on the ground that the respondent was not telling

the truth. Having rejected this explanation, the question then is what evidence was there before the committee. The only evidence consisted of the documentary evidence which we have set out and the evidence that B196 and B196A were rewritten pages of the 'D' ledger. On these three pages of 'D' ledger, namely, the orange B196, the rewritten B196 and the rewritten B196A, the committee reached the following findings:

- (i) the rewriting was intended to hide the personal expenses shown in the orange B196, and
- (ii) the orange B196 was genuine and the rewritten B196 and B196A were totally false accounts rewritten to cover up the omission of \$90,000 (the subject matter of the third charge) and \$30,000 (the subject matter of this charge) from the income of the firm for the years 1973 and 1974 respectively.

The committee's conclusion is as follows:

On the evidence before it, the committee has no doubt at all that the \$30,000 was taken out of the firm's 'P' account wilfully and with intent to evade payment of income tax. The sum of \$30,000 was utilized by the respondent and Khoo Hin Hiong to pay their own bills, thus reducing the firm's profit by \$30,000 and evading payment of income tax on the said sum.

With respect, we are unable to agree with this conclusion. The committee relied purely on documentary evidence and the documents alone do not prove that the rewriting was intended to hide the personal expenses shown in the orange B196 and that the rewritten B196 and B196A were totally false accounts. The documents as they stand are equivocal, and the Law Society had not established or shown any of the entries in the rewritten B196 and B196A as false. As we have previously held in dealing with the third charge, the major entries in the rewritten B196 were supported by vouchers, receipts and cheques; in respect of the rewritten B196A the Law Society had not proved that the entries therein were fictitious or false. At any rate, there was no satisfactory evidence that the \$30,000, which was transferred to the 'D' account, was omitted from the profit and loss account of the firm and consequently from the tax return for the year 1975.

In reaching its finding, the committee, by a majority, relied on the fact that the respondent compounded the offence of tax evasion in respect of the sum of \$30,000 and paid the penalty and tax on that amount. As we have held, the compounding of the offence by the respondent does not constitute an admission of guilt. In our judgment, the Law Society had not proved this charge beyond a reasonable doubt.

Fifth charge

The fifth charge against the respondent is as follows:

In 1973, on the respondent's instructions, a sum of \$34,686.93 in the firm's 'P' account was remitted to Hong

Kong, thereby reducing the firm's profits for that year by that amount. The book entries were made by the firm's then accounts clerk Jeannie Yim. In 1978, the respondent requested the said Jeannie Yim (who had left the firm's employment) to falsify the firm's books by creating a new account into which the said sum of \$34,686.93 was to be fictitiously entered, thereby concealing the original remittance to Hong Kong and removing from the books evidence of the respondent's and/or the said Khoo Hin Hiong's evasion of income tax on that sum.

There are two limbs to this charge:

- (i) In 1973 a total sum of \$34,686.93 in the firm's 'P' account was remitted to Hong Kong, and such remittance reduced the profit of the firm for that year, and
- (ii) The respondent in 1978 requested one Jeannie Yim to falsify the firm's books by creating a new account in which the said sum of \$34,686.93 was to be fictitiously entered with the view to concealing the original remittance to Hong Kong and removing from the books evidence of the respondent's and Mr Khoo's evasion of income tax on that sum.

On the first limb, there was no dispute that the respondent caused monthly remittances (totalling \$34,686.93) to be made to Hong Kong, and these remittances were taken from the 'P' account of the firm. The respondent testified that the purpose of these remittances was to buy shares in Hong Kong, and these remittances had been debited to his and Mr Khoo's personal current accounts with the firm and that at the end of the day there was no evasion of any tax at all. The committee did not accept the respondent's explanation. There was, however, no other evidence in relation to the remittances. The 'P' books for 1973 were not available. The respondent said that the books were handed to Jeannie Yim, but Jeannie Yim said that the books were returned to the respondent. As long ago as September 1979 the respondent could not find the 1973 'P' books. In his letter of 15 September 1979 to his solicitor, Mr Grimberg, the respondent explained as follows:

Around this period, ie between March and July 1978, at the request of Khoo Hin Hiong, I contacted Jeannie (who had written up the 1973 'P' books) to make some extracts. The rough instructions were contained in pieces of paper, the details of which I did not pay much attention to. Both cash book and ledger were then delivered by messenger to Jeannie. Jeannie returned the books without finishing anything. She delivered the books to Ben Khoo, our clerk and also nephew of Khoo Hin Hiong. I asked him to get the books back.

Ben Khoo has given a statement that after taking delivery of the books from Jeannie, he handed them back to me or Khoo Hin Hiong. Indeed, when the CID asked for the books again on several occasions this year, he said I asked him to go and look for the books again and he could not find them. He has been called a couple of times and he maintains the statement that it is possible that he has given them to Khoo Hin Hiong.

We find it necessary to mention this, as the committee appeared to have drawn an adverse inference against the

respondent for the failure to produce these books. We do not think that in the circumstances any adverse inference should be drawn against the respondent.

The fact remains, however, that the profit and loss account for the year 1973 was prepared by the auditors of the firm and the account was prepared from, among other things, the 'P' books, and if the remittances were taken from the 'P' books, as it was the case, then in all probability they would have been picked up by the auditors and incorporated into the profit and loss account; this is, of course, a matter of inference. But there are no other primary facts apart from the documentary evidence. The auditors of the firm were not called and there was no direct evidence that these remittances were not debited to the partners' accounts and not incorporated into the profit and loss account of the firm.

The committee said:

The committee noted that this remittance were made in 1973, more than ten years ago, and yet the respondent has not produced any books, accounts or other documentary proof that the sum in question was indeed debited to their personal account. Despite the absence of the 1973 'P' ledger and cash books one would have expected the respondent to have produced some other evidence, either from his firm's records or his personal records, to substantiate his contention.

The committee, with respect, was in error. The burden is on the Law Society to prove that not only were the remittances to Hong Kong debited to the 'P' account, but also that they were not included in the profit and loss account of the firm. The Law Society must prove that the reduction of the profit of the firm for 1973 had been brought about by these remittances to Hong Kong. That the Law Society had not succeeded.

On the second limb of this charge, the evidence of Jeannie Yim is crucial and it is necessary to examine her evidence in some detail. Jeannie Yim was the account clerk of the firm for the period approximately between 1971 and late 1974. She recalled that in or about June 1978, the respondent contacted her on the telephone and asked her to attend at his office which she did; she saw the respondent. She recalled that the respondent said that there were some errors made in the accounts but she could not remember exactly what was said, and that it was something to do with the accounts for the period 1972 to 1974; he wanted her to make some corrections. These corrections were to be made to the 'P' books but she could not remember which particular year it was in respect of which she was to make the corrections to the books. She also could not remember whether the respondent showed her other books, but she thought he showed her the 'P' books, and the corrections to be made on the 'P' books were regarding some transfers of money from the 'P' books to Hong Kong for Mr Khoo. The material portions of her evidence in examination-in-chief are as follows:

- A Q: What was the purpose of these corrections? Did he explain the purpose of these corrections?
A: He just wanted me to recreate another account to be put for these remittances and not to be charged into that particular account that I had charged it previously. So I understood that I had made ...
Q: Slowly, please.
A: So, at that point of time, I understood it as that I had entered it into a wrong account that I should not have entered into this account.
Q: I see and what were you to write up now?
A: So, I have to write up with the new account, these things have got to be transferred out to the new account.
...
A: I think it's a new account that did not exist.
Q: And what did he provide you with for this purpose?
A: A new ledger book.
Q: For what purpose?
A: Because I had to do the corrections of recreating another account. So I had to rewrite because what I wrote previously, I cannot just delete them out. So, I have to write a new set of books.
Q: You have to write a new set of books?
A: That's right.
Q: And the new set of books will contain the corrections that you were to make?
A: Yes.
Q: And which was this account that you had to rewrite in the new book, can you remember?
A: It is for the remittances that I had to recreate this new account.
...
Q: Yes. To what extent did you have to re-write the account according to what Mr Lim said? To what extent did you have to rewrite the account?
Chairman: How much of the account?
A: I think he said some of the remittances and certain things like the postages and some travelling expenses things. Some of these other little items. Not many, just a few.
...
A: The new book should be the same as the previous one except that those that needed to be corrected and put into the new account, included that particular account only.
...
G Q: And how did Mr Lim identify the items that had to be corrected?
A: I think he made pencil marks.
Q: He made pencil marks on the items to be corrected.
A: Yes, I think so.
Q: And what did these pencilled items show? What did they show? Was it just a tick or was it more than a tick?
H A: I cannot specifically remember.

The witness was then referred to a little notebook on which she said she had written the following:

24-5-73	— \$13,073.68	— advance from West Continental Sdn Bhd
5-7-73	— \$13,613	— West Continental Sdn Bhd
4-9-73	— \$ 8,000	— West Continental Sdn Bhd
Total	\$34,686.93	

She said she took down these figures after she had spoken to the respondent on the telephone, and that happened after she had seen the respondent at his

office. We again quote below verbatim the material portions of the evidence that followed:

Q: Why were these figures and dates and names given to you? What was the purpose?

A: Because the errors that I needed to transfer out would not balance if I didn't also take out the credit balance.

Q: For how much?

A: I believe the amount is thirty-four thousand something, added up to the new ledger sheet should contain about thirty-four over thousand. These are the figures which would balance off the account.

Q: And he gave this to you over the phone.

A: Yes.

...

Q: What did he say when you explained it didn't balance?

A: Perhaps I could go through the accounts and if I have got, I mean, a way of balancing it, they would leave it to me to try to balance it.

Q: Just leave it to you to balance it.

A: Yes.

Q: Did you complete the rewriting of the new ledger.

A: No.

Q: Did you do any part of the rewriting?

A: No.

On a close examination of her evidence given in examination-in-chief, it does not seem to us that anything was said by her which substantiated the second limb of the charge. The evidence she gave in the cross-examination by counsel for the respondent was even more nebulous. We quote below the several material portions:

Q: Now I want to ask you — coming on to 1978 — it's still nine years ago, you think that somewhere round about June 1978 Mr Lim telephoned you and you came to his office?

A: Yes.

Q: And he recalls that too.

A: Yes.

Q: And so far as the meeting at the office is concerned, would that have been a short meeting?

A: I can't exactly say.

Q: You can't remember?

A: Yes.

...

Q: And what he in fact told you at the time was that KHH — that's Khoo Hin Hiong — the one who's being charged with criminal offence — that he was asking whether you could assist him in making some extracts from the 'P' account book because you were the person who had written up the book. Do you remember that being said or was it possible that it may have been said?

A: I could only remember he made some reference to Mr Khoo being charged.

Q: Yes.

A: But it's regarding some income tax problem he told me ... regarding Mr Khoo's income tax problem but I can't remember what he wanted me to do.

...

Q: Yes, and Mr Lim instructs me that what he said to you, having shown you the plastic bag with books and the instructions on sheets of paper, he said words to the effect that you could follow the instructions and that you'd probably know more about what was required than he did — no doubt as you had written the books. You remember something like that being said?

A: I think so.

...

Q: You see I am instructed by Mr Lim that after you went off with the books, that some time later he telephoned you to ask you how you were doing with the books. You told him that you were too busy.

A: Yes.

Q: And then, I think, a boy was sent to your office to collect the books?

A: Yes.

Q: You remember that?

A: Yes.

Q: But apart from that telephone conversation, Mr Lim said that — leave aside whether Benjamin Khoo might have — he himself did not telephone you on any other occasion before you handed back the books. Is that possible?

A: Don't know.

Q: You don't know. So is your answer that you can't remember one way or the other?

A: I can't remember one way or the other.

In our judgment, the evidence of Jeannie Yim does not go near to proving that she was requested by the respondent to falsify the firm's account by creating a new account in which the sum of \$34,686.93 was to be fictitiously entered. There was no clear and precise statement from Jeannie Yim to that effect. On a totality of her evidence, it is not clear precisely what she was asked to do. Certainly her evidence is not such on which the court can rely in order to sustain the charge beyond a reasonable doubt.

Next, the committee relied on a letter written by the respondent to the Comptroller of Income Tax dated 16 June 1980, in which he wrote:

I refer to my previous letters to you and to the letter of agreement dated 30 November 1979 to the DPP by Drew & Napier acting as my solicitors.

In accordance with the said letter of 30 November 1979 written by Drew & Napier, I hereby admit the facts set out in the complaint to the magistrate dated 15 May 1980, made by Mr Robert Kang, Assistant Comptroller of Income Tax.

The complaint to the magistrate therein referred to was made by Mr Robert Kang, the Assistant Commissioner of Inland Revenue, in which Mr Kang alleged that the respondent had wilfully authorized Jeannie Yim to falsify the books of accounts of the firm for the year ended December 1973 with intent to assist Mr Khoo to evade tax. Both the complaint and the admission were made pursuant to the terms of the settlement reached on 30 November 1979 between Mr Grimberg and Mr Glenn Knight. That settlement, however, was subsequently called off by the prosecution, and in consequence the respondent withdrew the admission in a subsequent letter written to the comptroller dated 28 July 1980. It cannot be over-emphasized that the admission must be considered in the circumstances in which it was made and which we have recounted earlier in some detail.

Against that background, this piece of evidence is of doubtful quality and cannot be safely relied upon, particularly where the evidence of Jeannie Yim was so unclear and imprecise. At any rate, technically what Mr Kang alleged in that complaint was not precisely the matter contained in the charge.

Lastly, the committee relied on the fact that the respondent compounded the offence of falsification in respect of income omission of \$34,684 and in that connection paid tax amounting to \$19,076.30 and a penalty of 300% which he would have paid if convicted of wilful evasion of income tax under s 96(1)(a) of the Income Tax Act. For the reasons which we have given, we do not accept that compounding this offence constitutes an admission of guilt.

Sixth charge

The sixth charge relates to travelling expenses charged to the account of the firm and is as follows:

Between the years 1973 to 1977, the respondent consistently and improperly caused or permitted personal expenditure incurred by him, the said Khoo Hin Hiong, their friends, relatives and business associates to be debited to the firm's 'D' account, thereby offsetting these expenses from the firm's profits and fraudulently reducing the respondent's and the said Khoo Hin Hiong's taxable income. In compounding the offences thereby committed under s 96(1)(a) of the Income Tax Act, the respondent admitted to having debited a total sum of \$64,757 to the firm's 'D' account in the manner described.

Particulars

In 1973, a sum of \$ 9,791
In 1974, a sum of \$15,966
In 1975, a sum of \$13,000
In 1976, a sum of \$13,000
In 1977, a sum of \$13,000.

In support of this charge, the Law Society produced samples of bills for personal travel that were alleged to have been debited to the 'D' account. However, the total of the bills produced did not amount to the sum of \$64,757 as alleged in the charge. Except for three, the travel bills produced did not show specifically to what account they were debited. One of the three entries showed that a personal bill of \$1,955 was debited to an account T429 in the 'D' account. The second relates to a personal travel of \$2,264 which appears to have been charged to the 'D' account of a client. The third relates to a personal bill of \$1,235 which was also charged to a client's 'D' ledger. Apart from these three isolated cases, the extensive travel bills produced do not show that they were debited to the expense account or to the 'D' account so as to reduce the profits.

Even in the three cases, no evidence was led to show that the profits in the returns for the relevant tax years were understated by the amounts of the travelling expenses concerned.

The respondent was not charged with having committed any offence under s 96(1)(a) of the Income Tax Act with regard to the 'travelling expenses'. The amounts of travelling expenses were discussed during the negotiations with the prosecution, and, for the purpose of arriving at a settlement, a list of travelling expenses was submitted by the respondent for consideration. Eventually, a total amount of such travelling expenses was accepted by the prosecution for the purpose of arriving at a settlement, a list of travelling expenses was submitted by the respondent for consideration. Eventually, a total amount of such travelling expenses was accepted by the prosecution for the purpose of a composition. It was suggested that the provision of such a list constituted an implied admission that the travelling expenses (set out in the list) were improperly debited to the account and tax on the total amount of such expenses had been evaded. We do not agree. As there was no charge for the alleged evasion of tax in respect of the travelling expenses, an amount or amounts had to be submitted and agreed upon for the purpose of a composition. The submission of such amount or amounts which were eventually accepted for composition is no more an admission of guilt than the agreement to accept the amount contained in the charge which is subsequently compounded. In principle, there is no difference between compounding an alleged offence of tax evasion in respect of which the taxpayer has not been formally charged but the amount on which tax is alleged to have been evaded is agreed and a composition of an alleged offence of tax evasion in respect of which the taxpayer has been formally charged and the amount on which the tax is alleged to have been evaded is stated in the charge and is agreed upon. In neither case can the composition be considered as an admission of guilt.

The committee appeared to hold that as the travel bills had been debited to the 'D' ledger account, that effectively reduced the firm's 'P' income. This conclusion seems to have been based on Mr Keith Tay's evidence which the committee accepted. The committee in its report said:

Finally, Mr Keith Tay stated that the debit in the 'D' ledger in respect of these travel expenses which were entered against the respective clients' accounts would reduce the net profit costs to be transferred to fees and costs account in the 'P' ledger.

However, the evidence of Mr Keith Tay on this point is a pure inference, and in our view, there are no underlying primary facts to warrant such an inference. The mere debiting of travelling expenses to the 'D' account does not per se have the effect of reducing the firm's 'P' income. The Law Society has to go further to prove that these amounts, having been debited to the 'D' account, had not been picked up by the accountant and incorporated into the profit and loss account of the firm. Mr Keith Tay had no direct knowledge of the matter. While

he could testify that from the accounts travelling expenses had been debited to the 'D' ledger he could not go further, without other evidence, to say that this would reduce the net profit costs to be transferred to the fees and costs account in the 'P' ledger. Even if these amounts were not transferred, the Law Society would still have to adduce evidence to show that they were not picked up by the auditors and included in the profit and loss account of the firm. This essential link in the evidence is missing.

All the account books, including the 'P' books and the 'D' books, were available to the auditors and they are an independent firm of public accountants engaged by the firm to audit and prepare the accounts. No representative from the firm of accountants was called to give any evidence on how the profit and loss account was drawn up.

The committee relied on the evidence given by Mr Glenn Knight. However, Mr Glenn Knight was at the material time the deputy public prosecutor in charge of the prosecution of the various charges against the respondent and could give no material evidence relating to the charge, apart from admission, if any, made by the respondent to him. His evidence cannot be of any assistance to the committee.

Lastly, the committee, once again, relied on the Keith Tay report (exh L18) which was never admitted in evidence and alluded to the fact that Mr Keith Tay was not challenged with regard to certain statements he made in the report. On this the committee, with respect, was in error.

In our judgment, the committee in arriving at the conclusion took into consideration inadmissible evidence and its finding cannot be supported.

Seventh charge

We now turn to the seventh charge which initially is as follows:

In November 1980, the respondent instructed Coopers & Lybrand, a firm of public accountants, to render a special audit of the firm's 'C' and 'D' accounts. Doris Patricia Lim, an audit assistant of Coopers & Lybrand, was one of the persons who worked on the special audit.

On 24 May 1981, the respondent telephoned the said Doris Patricia Lim at her home and during their conversation, he requested her to inform the police (if asked) that she had not seen any ledger sheets or file relating to a sum of \$85,118 which was the subject of an evasion of income tax offence for which the respondent was then being tried. The respondent made this request after the said Doris Patricia Lim had informed him during the conversation that she thought she had seen the ledger sheets and file in question in the course of her audit work. By so doing, the respondent tampered with a prosecution witness or a likely prosecution witness to pervert the due administration of justice.

A This charge was subsequently amended after the close of the case of the respondent, and the amendment sought was an addition of an alternative charge, which is as follows:

Alternatively, the respondent requested the said Doris Patricia Lim to give false information to the police (if asked) to the effect that she had not seen any ledger sheets or file relating to a sum of \$85,118 in the course of her audit work when she had in fact seen such ledger sheets or file.

B The amendment was allowed by the committee against objection of counsel for the respondent. In our opinion, the amended alternative charge is different from the original charge and the committee ought not to have allowed the amendment. In *Re an Advocate & Solicitor*,³ it was held that a disciplinary committee appointed by the Chief Justice can only investigate matters referred to it by the Council of the Law Society and cannot decide on its own motion to investigate matters not specifically referred to it by the council. Further, it seems to us that the Law Society at such a late stage cannot introduce a new charge that was not inquired into by the inquiry committee and notice of which was not given by the inquiry committee to the respondent under what was then s 87(5) of Cap 217, and in this connection, the case of *Isaac Paul Ratnam v Law Society of Singapore*² fully covers the point.

E The subject matter of the charge is a telephone conversation between Doris Lim and the respondent that took place some seven years ago before the hearing and it is necessary to examine the evidence of Doris Lim on this conversation. Doris Lim was in 1980 an audit assistant of the accountant firm of Coopers & Lybrand. Sometime in November 1980, Coopers & Lybrand were engaged by the firm to do a special audit on the disbursements account of the firm: to verify untransferred fees belonging to the firm not exceeding \$85,118 as at January 1974. Doris Lim was then in charge of this special audit. Her evidence of the telephone conversation between her and the respondent is as follows:

Q: And could you please explain to the committee what happened that morning?

A: Okay, I will relate back the experience. It was a Sunday, 24 May 1981, at about 10 o'clock I received a telephone call from Lim Chor Pee. He asked ...

A: Where was this call?

A: It was at my home on Sunday.

Q: He had your telephone number?

A: I believe he could get it from his secretary or from ...

A: Yes.

A: He asked me if I could remember anything relating to the \$85,118, that case which we were auditing. I told him I could vaguely remember because I myself have gone through some files.

Q: Slowly, it's got to be recorded: I told him I could vaguely remember, some files I had studied?

A: Yes, I told him I could vaguely remember some of the files because I had gone through them. He asked me to

be more specific, he asked if I could remember the colour of the file.

Q: Which file?

A: The colour.

Q: What was that particular file he was referring to?

A: The local file which I had studied.

Q: The local file, did it have a reference?

A: It did have a reference.

Q: Which file was it?

A: Which had been verified — I couldn't remember the reference of the file, I couldn't remember the colour.

Q: Was he referring to a particular file?

A: I believe he was.

Q: Which file was it?

A: It was the file relating to the case of untransferred fees in the \$85,118.

Q: The file relating to the untransferred fees of \$85,118?

A: Yes.

Q: You could not remember the colour of the file, you could not remember the reference ... Yes, please go on?

Mr Hwang: I don't recall the witness saying she did not remember the colour? Did she say that?

A: Yes, I did, because Mr Lim asked me if I could be more specific, I couldn't remember the colour; he asked me about the name, I couldn't remember the name. He mentioned he checked up with Philip Tan, my audit manager, he reported that he already checked up with Philip Tan, my audit manager, and since Mr Philip Tan couldn't remember the file, he said I might as well say I haven't seen the file, the file was lost.

Q: You might as well say you hadn't seen the file?

A: I had not seen the file.

Q: Say to whom?

A: Say to whoever queried me or asked me. I took it to be CID people, because at this time I was working very closely with the CID personnel.

Q: And did Mr Lim at this conversation explain anything to you about this file?

A: No, he just said the file was missing, it was misplaced and since nobody could remember, we might as well say we didn't see it.

Q: And what did you say?

A: At that point I said, Okay, and we ended the conversation there.

The material portion of her evidence on cross-examination on the point is as follows:

Q: And when Mr Lim telephoned you on Sunday, 24 May at about 10am, his firm by that date was still clients of Coopers & Lybrand?

A: Yes.

Q: And I think Coopers & Lybrand had been auditors and accountants to the firm of Chor Pee since about 1978?

A: Yes.

Q: And when Mr Lim Chor Pee telephoned you that morning at about 10am — Sunday, 24 May — had you at that stage given any statement to the CID or had they asked you to be a witness at that stage?

A: No.

Purely on the evidence of Doris Lim it does not appear that she was asked to give false information to the police or anyone. Doris Lim admitted that at the time of conversation she had not given statement to the police; nor had she been asked to be a witness. Therefore, the initial charge of tampering with a prosecution witness or

A a likely prosecution witness to pervert the due administration of justice clearly cannot be sustained.

As for the alternative charge, the evidence of Doris Lim is also unclear, and is not sufficient to found that charge. The finding of the committee that the respondent requested her to say that she had not seen the file in question when in fact she had seen it is not justified on the evidence.

It is necessary to consider also the evidence of the respondent on this conversation. His evidence on this point is as follows:

Q: And again to the best of your recollection, well, it's seven years ago, to the best of your recollection, can you give us a gist of what you said to Doris Lim and what she said to you?

A: I asked her some information about at what stage did we sort of stop the audit because the audit was not completed because the charge did not proceed that way. And then I asked her, you know, did you check the figures, did you get the figures right?

A: And then I said I couldn't find the file now, you remember seeing it and she couldn't remember anything. And then I asked her, you know, 'Are you sure?' She said yes, she can't remember. And I said, 'Well, OK, if you are asked and if you can't remember something which you are asked, you better say so.'

E In our judgment, the evidence is not sufficient to establish the case of the Law Society on the initial charge or on the alternative charge.

Further legal points

There are two further legal points or objections counsel for the respondent raised before us. The first is this. The first, third, fourth and fifth charges are tax evasion charges and the subject matters are substantially the same in the income tax charges which the Comptroller of Income Tax had compounded. These offences, having been compounded, the Attorney General as the Public Prosecutor is precluded from prosecuting the respondent on those charges. However, the Attorney General by his letter of 2 March 1983 lay information against the respondent under s 82(2) of the Act containing, inter alia, the same charges on which he could not prosecute the respondent. That, counsel submitted, is an abuse of process.

H The second point is that the Attorney General had chosen to proceed under what was then s 82(2) of Cap 217, ie he had referred to the Law Society information touching upon the respondent's conduct in his professional capacity. The matters raised in the information, however, do not touch upon the respondent's conduct in his professional capacity.

I Since we have considered and disposed of all the charges on the merits, and, in our judgment, none of them have been established, we do not find it necessary to decide these points which have become academic.

Costs

We now turn to the question of costs. In this case, the Law Society had framed the charges in an extremely broad manner, and in respect of the first charge and the seventh alternative charge they are outside the scope of the information referred by the Attorney General. In respect of most of the charges we found the evidence most inadequate. For these reasons and taking into account all other relevant circumstances, we are of the opinion that in this case the respondent should have his costs of the hearing before us. We accordingly so ordered.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Chor Pee & Co.*

Reported by *Yap Shao Sin*

A MALAYSIAN REPORTS

Government of Malaysia & Anor v Taib bin Abdul Rahman

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-59 OF 1990

B ABDUL HAMID LP, MOHAMED AZMI AND GUNN CHIT
TUAN SCJJ
6 APRIL 1991

Civil Procedure — Consent order — Action for damages for personal injuries sustained in road accident — Death of plaintiff — No personal representative appointed — Application of son of plaintiff to be made a party — Consent order made — Application to set aside consent order — Subordinate Courts Rules 1980, O 8 r 9(1) — Probate and Administration Act 1949, s 39

C

Civil Procedure — Parties — Capable or proper person — Action for damages for personal injuries sustained in road accident — Death of plaintiff — No personal representative appointed — Application of son of plaintiff to be made a party — Letters of administration not granted to son

D

Words and Phrases — 'That other person' — Subordinate Court Rules 1980, O 8 r 7(2) & r 9(1)

In this case one Taib bin Ibrahim had brought an action for damages against the appellants arising out of a road accident. In the course of the proceedings in the sessions court the plaintiff died and his son, Abdul Rahim, applied to be appointed a party under O 8 r 7(2) of the Subordinate Courts Rules 1980. The application was allowed by the learned president with the consent of both parties so that the action could be carried on as if Abdul Rahim had been substituted as a plaintiff for his deceased father. Subsequently, however, the appellants applied to have the consent order set aside on the ground that Abdul Rahim was not a capable nor proper person to be made a party to the suit as letters of administration had not been granted to him. The learned judge of the High Court dismissed the application and the appellant appealed.

E

F

Held, dismissing the appeal:

(1) In order to give effect to the principal object of r 7(2) of O 8 of the Subordinate Courts Rules 1980, which is to avoid delay in the dispute of cases, the word 'that' immediately preceding the word 'other person' should be read merely as a relative or conjunctive adverb. It should not be read as a demonstrative pronoun referring to the earlier mentioned 'some other person' upon whom the interest or liability of a party devolves but should be read as a mere conjunction introducing the words 'other person'.

H

(2) When at any stage of any proceedings, the plaintiff dies intestate and his interests devolve or vest temporarily in the official assignee under s 39 of the Probate and Administration Act 1959, until administration or probate is granted, the court has the discretion to order that his son or some other person be made a party under O 8 r 7(2), if the court thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be completely determined and adjudicated upon.

I

(3) In this case having waived the defence of limitation through the consent order, the consent order can only be set aside by a fresh action.